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June 23, 2006

Bill Lenkeit, Legal Division Senior Counsel
Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, California 95814

Re: July 11 Interested Persons' Meeting to discuss Public Generally Exception

Dear Mr. Lenkeit:

I am the City Attorney for the City of Ukiah, and submit these comments for consideration at the Interested Persons' Meeting scheduled for July 11, 2006, to discuss the Public Generally exception. I also plan to appear at the meeting.

The Ukiah City Council became concerned with the impact of the Commission's regulations earlier this year, when the "500 foot rule" (see 2 CCR § 18704.2) triggering the "even one cent" rule required four of the five City Councilmembers to declare a conflict regarding the development of formed based zoning and a possible limitation on "formula businesses" for the downtown area of the City.

Through the City Attorney List Serve, I discovered, at least, 15 other small cities with similar concerns. The League of California Cities agreed to facilitate a discussion of this problem at the Spring City Attorney Conference. City attorneys representing numerous small cities attended a "break out session" to discuss the problem.

Examples of the participants in the break-out session include Ukiah which has a resident population of approximately 15,500, ranges in width from .5 miles to 1.5 miles, is roughly 4 miles long and 4.7 square miles; Solano Beach, which has a resident population of approximately 13,000 and is roughly 4 square miles; Bishop with a population of 3600 and roughly 1.8 square miles, and Loma Linda which has a population of roughly 20,000 and is approximately 7.3 square miles.

In these smaller communities land use issues affecting select, but very important, parts of town are among the most important issues facing these communities. The importance of these issues to the community as a whole generally outweighs the financial impact on property owned by individual city officials.

For example, because of its climate and coastal access, Solano Beach has a large number of vacation rentals. Bluff erosion is a major issue in Solano Beach and shoreline issues motivated a number of council members to run for office. Solano Beach hired an expert to establish that a sufficient number of parcels were affected by these issues to qualify for the public generally exception under 2 CCR §18707.1 [10% of property owners]. The FPPC has taken the position that vacation rentals cannot be counted as households. As a result, the FPPC would not recognize the applicability of the public generally exception for shoreline protection issues in Solano Beach.

Loma Linda is home to Loma Linda University. One city council member is a professor at the University. Another is a lawyer who represents the University. A third city council member is a physician at Loma Linda University Medical Center. The city council winds up drawing straws, whenever an issue comes before the city council that could have a material financial effect on the University. A large number of issues tend to affect the University, because of its location and importance to the community.

In Bishop, because of its very small size, the biggest problem is the proximity of single family residences to other property in the city which may be the subject of a land use decision.

Ukiah faces similar problems. Preservation of its downtown is a major issue in the city as it is for many small cities. Because the downtown is located in the virtual center of the city and because the city is quite narrow, four of the current city council members own property (either their own home or a business office) within 500 feet of the boundaries of the area recognized as the downtown business improvement district and the "gateway streets" leading from US Highway 101 into the downtown area.

The importance of these land use decisions frequently motivate people to run for city council. These officials run for office based on their positions regarding these questions and their constituents voted for them, because of these positions. The constituents expect them to vote, when these issues come before the city council and are frequently disappointed that their candidate must refrain from participating because of conflicts of interest. When participants are selected at random under 2 CCR § 18708, chance, rather than the political process, often determines how a city council decides these critical issues.

Because of their small size and populations, the 500 foot rule and the limitations on the Public Generally exception have a greater impact on small cities than on larger ones. This is the case, for example, in Solano Beach, Bishop, Loma Linda and Ukiah. A revision of the Public Generally regulations could reduce this impact for small cities, encourage qualified candidates to run for office and allow decisions to be made by the democratic process rather than by drawing cards or rolling dice.

The proposals in the notice of the Interested Parties meeting focus on a financial test for measuring whether the economic affect on an official's real property is substantially the same as the affect on property owned by a significant segment of the public.

This focus does not address the concerns of the Ukiah City Council and those I have heard from other similarly situated small cities. First, measuring the financial effect of a land use decision on a particular property, where that property is not the subject of the decision, but only within a certain distance of the property or area affected, is difficult. Predicting the effect of the decision on the market value of the property is not an exact science. In many, if not most, cases there will be many different opinions. If the ability to participate in the decision depends on a percentage or dollar figure, most public officials will simply recuse themselves to avoid the risk of sanctions and penalties.

Second, decisions affecting important parts of small cities affect the public official in the same way as a substantial portion of the general public, because the community wide impact greatly outweighs the impact on their individual financial interests. How they decide these questions is determined by their campaign platform and their goals for the community; not by the effect of the decision on their property. This is especially true when the real property at issue is the official's personal residence or houses the official's business, such as a professional office or a store.

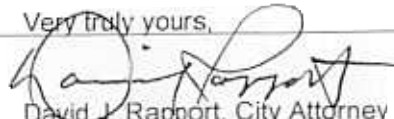
Third, for cities which are geographically small, land use decisions affecting important parts of small towns will come within the 500 foot rule in a much higher percentage of cases than in larger cities. At the same time, the 10% or 5000 property owners standard in 2 CCR §18707.1 will preclude the participation of officials in a larger number of cases.¹

In Ukiah, for example, there are a total of approximately 6000 parcels. The decision would have to affect the official's property in the same way that it affects 600 parcels for the official to qualify for the Public Generally exception under existing regulations. This is an unreasonably high number in a city of 15,500 people. In cities which are less than 10 square miles, for example, a smaller number of parcels should qualify as a substantial segment of the general public, perhaps in the 100-300 parcel range.

Ukiah would also request that the Commission consider a separate rule for decisions affecting areas of a city of special importance to the city as a whole and which are officially designated, such as historic districts, downtown business improvement districts, areas served by a main street program, university campuses, coastal zones, or sensitive environmental habitats such as wetlands or shoreline protection zones. As to decisions affecting those areas, there could be a presumption that the community-wide impact of the decision outweighs the impact on an official's home or primary business property, and, therefore, affects the official in the same way as a substantial segment of the general public. This presumption could apply to property located outside the affected area but within 500 feet of the area boundary. The presumption could be overcome, if there is substantial evidence that the official's property would be uniquely affected.

The Ukiah City Council strongly recommends that the Commission consider these impacts of the 500 foot rule and the public generally exception on cities which are relatively small both geographically and in population. As currently applied, these rules do little to prevent corruption or the appearance of corruption in public decision-making and significantly interfere with the ability of small towns to govern themselves democratically. The City maintains that adjustments can be made within the statutory framework of the Political Reform Act and within the regulatory authority of the Commission that will go a long way toward remedying this situation.

Very truly yours,



David J. Rapport, City Attorney
City of Ukiah

Cc: City Manager
Ukiah City Council

¹ The Commission might also consider a revision of this standard, because it is difficult to identify "property owners," as distinct from parcels, because individual parcels can have multiple owners, but the number of owners for each parcel is often difficult to determine from the records which are available to city officials and planning departments.